

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMELIA FOOS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ANN, INC., a Delaware corporation doing
business as Ann Taylor Retail, Inc.,

Defendant.

Civil No. 11cv2794 L (MDD)

**ORDER GRANTING IN PART
MOTION FOR APPEAL BOND [doc.
#52]**

The Objector to the settlement agreement in this action has filed an appeal with the Ninth Circuit Court of Appeals. Plaintiff seeks an appeal bond of \$5,000.00 under Federal Rule of Appellate Procedure 7.

District courts “may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal.” *Azizian v. Federated Dep’t Stores, Inc.*, 499 F.3d 950, 954–55 (9th Cir. 2007) (citing FED. R. APP. P. 7). “[T]he purpose of [an appellate bond] is to protect an appellee against the risk of nonpayment by an unsuccessful appellant.” *Fleury v. Richemont N. Am., Inc.*, 2008 WL 4680033, at *6 (N.D. Cal. Oct.21, 2008) (quotations and citations omitted). In determining whether a bond should be required, the court should consider: (1) the appellant's financial ability to post a bond; (2) the risk that the appellant would not pay the appellee's costs if the appeal loses; and (3) the merits of the appeal. *Miletak v.*

1 *Allstate Ins. Co.*, 2012 WL 3686785, at 2 (N.D. Cal. Aug. 27, 2012); *see also Fleury* at *6–7.

2 Appeal bonds have been granted regularly when an objector appeals the approval of a
 3 final settlement in a class action case. *See, e.g., Fleury*, 2008 WL 4680033 at *6–7 (imposing a
 4 \$5,000 bond for appeal of the final settlement approval after objector filed notice of appeal);
 5 *Miletak v. Allstate Ins. Co.*, 2012 WL 3686785, *1 (N.D. Cal. Aug. 27, 2012) (imposed a \$60,000
 6 bond for appeal of the final settlement approval after objector filed notice of appeal); *In re*
 7 *MagSafe Apple Power Adapter Litigation*, 2012 WL 2339721, *1 (N.D. Cal. May 29, 2012)
 8 (imposing a \$15,000 bond on both objectors who filed a notice of appeal); *Embry v. ACER*
 9 *America Corp.*, 2012 WL 2055030, *1 (N.D. Cal. June 5, 2012) (imposing a \$70,650 bond for
 10 appeal of the final settlement approval while appeal was pending); *Yingling v. eBay, Inc.*, 2011
 11 WL 2790181, *1 (N.D. Cal. July 05, 2011) (imposing a \$5,000 bond for appeal of the final
 12 settlement approval after objector filed notice of appeal); and *In re Wachovia Corp.*
 13 *Pick-A-Payment Mortg. Marketing and Sales Practices Litigation*, 2011 WL 3648508, *1 (N.D.
 14 Cal. Aug. 18, 2011) (imposing a \$15,000 bond for appeal of the final settlement approval after
 15 objector filed notice of appeal). The Court may award an appeal bond comprising appellate costs
 16 and administrative costs. *Miletak*, 2012 WL 3686785, at 2.

17 Plaintiff contends that a \$5,000.00 bond is appropriate because the Objector has the
 18 ability to post such a bond and because her appeal is frivolous. Objector argues, however, that
 19 the cost bond, if required, should be no more than \$200.00 because plaintiff has failed to support
 20 her estimate of taxable costs and the appeal is taken in good faith.

21 The posting of an appeal bond is warranted in this case. Objector does not contend that
 22 she would be unable to pay an appeal bond, even one set at \$5,000.00. Neither party has
 23 discussed the difficulty of collecting payment post-appeal but Objector is a resident of
 24 California, which suggests this is a neutral factor. But the merits of Objector's appeal weigh
 25 heavily in favor of requiring a bond. The Court considered each objection Objector put forth in
 26 discussing the settlement. The Court concluded that each objection was without merit. As a
 27 result, the posting of an appeal bond is warranted.


28 The amount of the appeal bond sought, however, is excessive. Plaintiff has provided no

1 detail as to why a \$5,000.00 bond would be appropriate. Even allowing for significant potential
2 administrative costs while the case is on appeal, the Court, in its discretion, finds that \$1,000.00
3 is a reasonable appeal bond amount.

4 Based on the foregoing, plaintiff's motion for appeal bond is **GRANTED**. Objector Sarah
5 McDonald shall post a \$1,000 bond or file a notice of dismissal of her appeal within 10 days of
6 the filing of this Order.

7 **IT IS SO ORDERED.**

8 DATED: May 20, 2013

9 
10 M. James Lorenz
United States District Court Judge

11 COPY TO:

12 HON. MITCHELL D. DEMBIN
13 UNITED STATES MAGISTRATE JUDGE

14 ALL PARTIES/COUNSEL
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